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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,453	02/18/2004	Eric Jason Stelnicki	1027-2DIV	1761
31292	7590	12/21/2004	EXAMINER	
CHRISTOPHER & WEISBERG, P.A. 200 EAST LAS OLAS BOULEVARD SUITE 2040 FORT LAUDERDALE, FL 33301			SAFAVI, MICHAEL	
		ART UNIT		PAPER NUMBER
				3673

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/781,453	STELNICKI, ERIC JASON <i>ST</i>
	Examiner M. Safavi	Art Unit 3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 September 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 9,10,18,19,22-28,30-32,34 and 35 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 9,10,18,19,22-28,30-32,34 and 35 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

The indicated allowability of claims 9, 10, 18, 19, 23-28, 30-32, 34, and 35 is withdrawn in view of the newly discovered reference(s). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

Claims 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23, "the at least one rear support pads" as well as "the at least one support pads" lacks antecedent basis within the claim. Does claim 18 set forth support pads and rear support pads? In fact, claim 18 does not distinguish between a support pad and a rear support pad.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 19, 22-28, 30, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honer '263 in view of any of Corley '459, Ihnat, Jr. '914, and McGarry '761.

Honer discloses an apparatus comprising a headgear and at least one support pad 10, 11, 12 being removably attachable to the headgear wherein the at least one support pad is positionable between the head of the infant and a sleeping surface. At least one rear support pad 10 is included to further cushion the user's head.

Each of Corely, Ihnat, Jr., and McGarrity teach an apparatus comprising a headgear and at least one insert being removably attachable to the headgear wherein the at least one insert is inserted into a pocket or receiver within the headgear, 7 of Corley; 28 of Ihnat, Jr.; and 14 into 46 via 48 of McGarrity. To have formed the Honer headgear so as to allow for removably attaching the support cushion pad, thus permitting a user to wash or change support cushion pads, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by any of Corley '459, Ihnat, Jr. '914, and McGarrity '761 with Ihnat, Jr. particularly teaching application of a toroidal support pad.

The recitation "for controllably positioning and supporting a head of an infant while lying down" is a statement of intended use as is "the at least one rear support pad is arranged to be stackable with at least one other rear support pad for one of matching and exceeding the contour of the infant's head on a contra lateral side." A recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art - if the prior art has the capability to so perform (see MPEP 2114 and Ex parte Masham, 2 USPQ2d 1647 (1987). In the instant case, the headgear of Honer is capable of positioning and supporting the head

of an infant while lying down. And, the support pads of the modified Honer headgear can be "stacked" in any fashion particularly, outside of the headgear.

As concerns claim 30, Honer, as modified, discloses a using a headgear to controllably position and support a head of a person while lying down. The method of selecting at least one support pad, attaching the selected at least one support pad to the headgear, and positioning a person to place the support pad between the head of the person and the surface is inherent from Honer, as modified. It would have been a further obvious expedient to one having ordinary skill in the art at the time the invention was made to have utilized the modified Honer cap with an infant, to provide for comforting sleep.

As concerns claim 34, Honer, as modified, further discloses that the step of attaching the selected at least one support pad to the headgear includes inserting the selected at least one support pad into a pocket on the headgear.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honer '263 in view of any of Corley '459, Ihnat, Jr. '914, and McGarrity '761 as applied to claims 18, 19, 22-28, 30, 34, and 35 above, and further in view of Bridley '832.

Bridley discloses an infant positioning system comprising an infant support device (10) configured for receiving the infant. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided or coupled the modified Honer cap with the support device positioning system of Bridley, so as to allow for particular positioning of the infant body during sleep.

Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honer '263 in view of any of Corley '459, Ihnat, Jr. '914, and McGarrity '761 as applied to claims 18, 19, 22-28, 30, 34, and 35 above, and further in view of any of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924.

Each of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924 teach application and utilization of support pads as a stack to align a head and/or body of a user, Fig. 4 of Alivizatos '403; Figs. 1-7 of Painter '784; 12 and 16 of Ross '665; and Figs. 2-4, 7, 25B, and 26B of Brady et al. '924. To have provided for application and utilization of support pads as a stack to align a head and/or body of an infant along with utilization of the modified headgear of Honer, thus assuring a comfortable position and posture during sleep, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by any of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924.

Claims 18, 22, 23, 26, 28, and 30, are rejected under 35 U.S.C. 103(a) as being unpatentable over El Hassen '367 in view of Clavelle '840.

El Hassen discloses a cap provided with support pads 2 including a rear support pad. The padded parts may be fastened to the band by any means, col. 2, lines 38-41.

Clavelle teaches removably fastening auxiliary parts to a cap as by hook and loop fasteners, snaps, etc. To have attached the pads of El Hassen in a removable fashion as by hook and loop fastening means, thus permitting a user to wash or change

support cushion pads, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Clavelle.

As concerns claim 30, El Hassen, as modified, discloses a using a headgear to controllably position and support a head of a person while lying down. The method of selecting at least one support pad, attaching the selected at least one support pad to the headgear, and positioning a person to place the support pad between the head of the person and the surface is inherent from El Hassen, as modified. It would have been a further obvious expedient to one having ordinary skill in the art at the time the invention was made to have utilized the modified El Hassen cap with an infant/child, (see line 42 of col. 1 of El Hassen), to provide for comforting sleep or, at least, comfortable rest.

Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over El Hassen '367 in view of Clavelle '840 as applied to claims 18, 22, 23, 26, 28, and 30 above, and further in view of any of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924.

Each of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924 teach application and utilization of support pads as a stack to align a head and/or body of a user, Fig. 4 of Alivizatos '403; Figs. 1-7 of Painter '784; 12 and 16 of Ross '665; and Figs. 2-4, 7, 25B, and 26B of Brady et al. '924. To have provided for application and utilization of support pads as a stack to align a head and/or body of an infant/child along with utilization of the modified headgear of El Hassen, thus assuring a comfortable

position and posture during sleep, or at least, comfortable rest, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by any of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2481. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



M. Safavi
December 14, 2004

MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354